

## Enclosure E

### Special Conditions

#### 1. Basis for Requiring Special Conditions

Pursuant to IDEA section 616(g) of Part B of the Individuals with Disabilities Education Act (IDEA or Part B) and 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on the District of Columbia Office of the State Superintendent's (State's, D.C.'s, or D.C. OSSE's) Federal Fiscal Year (FFY) 2010 grant awards under IDEA.

The State did not meet the Special Conditions<sup>1</sup> imposed on its FFY 2009 Part B grant to ensure: timely initial evaluations and reevaluations; timely implementation of hearing officer determinations (HODs); identification and timely correction of noncompliance, including noncompliance regarding placement in the least restrictive environment (LRE); and that individualized education programs (IEPs) of youth aged 16 and above include the required secondary transition content. OSEP has imposed Special Conditions on D.C.'s IDEA Part B grant award since 2001.

*Timely initial evaluations and reevaluations:* An initial evaluation that meets the requirements of section 614(a)(1), (b), and (c) of the IDEA and 34 CFR §300.301(c)(1) must be completed for all children with disabilities, and an appropriate placement must be made within the maximum number of days established by the State's policy.<sup>2</sup> See also, section 612(a)(7) of the IDEA. A reevaluation that meets the requirements of section 614(a)(2), (b), and (c) of the IDEA and 34 CFR §300.303 must be completed for each child with a disability no later than 36 months after the date on which the previous evaluation or reevaluation was completed, unless the parent and the local educational agency (LEA) agree that a reevaluation is unnecessary.<sup>3</sup>

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<sup>1</sup> These areas of noncompliance are included in the Memorandum of Agreement (MOA) entered into on December 7, 2009 between D.C. and the Department. The Department agreed to modify the FFY 2009 Special Conditions to align with the reporting under the MOA to avoid duplication and reduce the burden of reporting.

<sup>2</sup> Section 614(a)(1)(C)(i)(I) of the IDEA and 34 CFR §300.301(c)(1) require that an initial evaluation be conducted within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe. Section 38-2561.02 of the D.C. Code states that the District of Columbia must "assess or evaluate a student who may have a disability and who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment." Section 3005.2 of Chapter 30 of Title 5 of the D.C. Municipal Regulations states: "The IEP team shall conduct an initial evaluation of a child within a reasonable time of receiving a written referral and parental consent to proceed and within timelines consistent with Federal law and D.C. Code Section 38-2501(a)." (D.C. Code Section 38-2501(a) has been repealed and D.C. Code Section 38-2561.02 now addresses timeliness of evaluations.) Section 3013.1(c) specifies: "The LEA shall ensure that the educational placement decision for a child with a disability is made within timelines consistent with applicable local and Federal law." Page five of the Procedural Manual for Parents (as revised July 2005) states that "under District of Columbia law, the LEA has no more than 120 calendar days after the date a child is referred for evaluation to determine his/her eligibility for special education services, develop the individualized education program (IEP) and begin delivery of appropriate special education and related services." Page 14 of the State's "Part B Initial Evaluation/Reevaluation Policy," dated March 22, 2010, states that the "LEA must complete an initial evaluation, including the determination of the eligibility of a child suspected of having a disability within 120 calendar days of receiving the written referral."

<sup>3</sup>Section 614(a)(2) of the IDEA and 34 CFR §300.303 require that a reevaluation occur at least once every three years, unless the parents and the LEA agree that a reevaluation is unnecessary. Page 15 of the State's "Part B Initial

D.C. reported 70% compliance with timely initial evaluations and 68% compliance with timely reevaluations in its April 1, 2010 MOA progress report. Only 17% and 37% of overdue initial evaluations and reevaluations, respectively, were completed (“the backlog”). In addition, D.C. reported that 395 children had not been provided a timely initial evaluation and 399 children had not been provided a timely reevaluation as of March 5, 2010.

*Timely implementation of HODs:* Hearing officer determinations must be implemented within the time frame prescribed by the hearing officer, or if there is no time frame prescribed by the hearing officer, within a reasonable time frame set by the State, as required by section 615(f) and (i) of the IDEA. D.C. reported in its April 1, 2010 MOA progress report that 60% of HODs were implemented in a timely manner and 60% of the backlog of HODs were implemented.

*Identification and timely correction of noncompliance, including noncompliance regarding placement in the LRE:* Section 612(a)(11) of the IDEA and 34 CFR §300.149 require States to ensure that each educational program for children with disabilities administered within the State is under the general supervision of individuals responsible for educational programs for children with disabilities in the State educational agency. Section 616(a)(1)(C) of the IDEA requires States to monitor implementation of Part B by LEAs. The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in 34 CFR §§300.600 through 300.602 and 300.606 through 300.608. See also 20 U.S.C. 1232d(b)(3). In exercising its monitoring responsibilities under §300.600(d), the State must ensure that when it identifies noncompliance with requirements of Part B by LEAs, including noncompliance regarding placement in the LRE, the noncompliance is corrected as soon as possible, and in no case later than one year after the State’s identification of the noncompliance (34 CFR §300.600(e)).

During FFY 2009, D.C. provided monitoring reports for ten LEAs that received onsite monitoring in May and June 2009, and notified eleven LEAs in March 2010 of their noncompliance with secondary transition requirements and required specific corrective actions. D.C. has not yet provided documentation of correction of the noncompliance identified through these activities. Therefore, D.C. has not demonstrated that it has a general supervision system that ensures correction of noncompliance in a timely manner consistent with OSEP Memorandum 09-02, dated October 17, 2008 (OSEP Memo 09-02).

*Secondary transition:* Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include: (1) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals, as required by section 614(d)(1)(A)(i)(VIII) of the IDEA and 34 CFR §300.320(b). In its April 1, 2010 MOA progress report, D.C. reported that of the 100 IEPs of youth aged 16 and above that D.C.

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Evaluation/Reevaluation Policy,” dated March 22, 2010, states that the “LEA must hold a reevaluation meeting within three years of the date the previous initial evaluation or reevaluation was completed. The reevaluation meeting must be scheduled in time to allow the IEP team to conduct assessments, if necessary, and to reconvene within three years of the previous eligibility meeting.”

OSSE reviewed in March 2010, none (0%) included the required secondary transition content.

*Early childhood transition:* Children referred by Part C prior to age three, who are found eligible for Part B, must have an IEP developed and implemented by their third birthdays, as required by IDEA section 612(a)(9) and 34 CFR §300.124(b). While D.C. was unable to report in its FFY 2008 APR, valid and reliable data for compliance indicator 12 on early childhood transition, it did report that its best available data indicate 8% compliance for this indicator.

*Collect and report valid and reliable data for SPP/APR indicators:* Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans, as required by section 616(b)(2)(B) of the IDEA and 34 CFR §300.601(b)(1). D.C. was unable to report in its FFY 2008 APR, valid and reliable data for compliance indicators 12 (early childhood transition) and 15 (identification and correction of noncompliance).

As a result of D.C.'s inability to provide valid and reliable FFY 2008 data for compliance indicators 12 and 15 and its failure to meet the FFY 2009 Special Conditions imposed on its FFY 2009 grant awards, D.C. received a "needs intervention" determination for the fourth consecutive year. The Department's June 3, 2010 determination letter requires D.C. OSSE, pursuant to IDEA section 616(e)(2) and 34 CFR §300.604(b), to submit a corrective action plan (CAP) that is reasonably designed to address each of the areas in which the State needs intervention and to demonstrate that it has used \$500,000 of FFY 2010 State-level funds under IDEA section 611(e), and/or has directed LEAs to use FFY 2010 Part B funds, to reduce the backlog of overdue evaluations and reevaluations.

Therefore, OSEP is imposing the following Special Conditions for FFY 2010 to ensure that D.C. corrects the areas in which the Department has determined the State needs intervention.

## 2. Nature of the Special Conditions

The State must comply with the following Special Conditions:

- a. **CAP:** As directed in OSEP's June 3, 2010 FFY 2008 SPP/APR response letter to D.C. OSSE must submit a CAP that ensures the State can: (1) provide valid and reliable data for Indicator 15 with its FFY 2009 SPP/APR; (2) provide valid and reliable data for Indicator 12 with its FFY 2009 SPP/APR; (3) demonstrate compliance with the requirement to ensure children referred by Part C prior to age three, who are found eligible for Part B, have an IEP developed and implemented by their third birthdays (IDEA section 612(a)(9) and 34 CFR §300.124(b)); (4) demonstrate compliance with the requirement that IEPs for youth aged 16 and above include required secondary transition content (IDEA section 614(d)(1)(A)(i)(VIII) and 34 CFR §300.320(b)); (5) demonstrate compliance with the requirement to implement HODs in a timely manner (IDEA section 615(f) and (i)); (6) demonstrate compliance with the requirement to conduct timely initial evaluations and reevaluations (IDEA sections 612(a)(7) and 614(a) through (c) and 34 CFR §§300.301(c)(1) and 300.303); and (7) demonstrate that it has a general supervision system that is reasonably designed to effectively identify and correct noncompliance in a timely manner (IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, 20 U.S.C. 1232d(b)(3), and OSEP Memo 09-02).

D.C. OSSE must submit its CAP to OSEP by August 1, 2010. The CAP must include: (1) a description of the specific actions the State will take to address each of the seven areas specified above; (2) the projected timelines for completing each of the actions; (3) the name of the party responsible for implementing each action; and (4) a description of the evidence D.C. OSSE will submit to OSEP to demonstrate that the action has been completed.

- b. **CAP Progress Reports:** D.C. OSSE must report on the status of implementation of the CAP in accordance with the schedule specified below:

	<b>CAP Progress Report Due Date</b>
First CAP Progress Report	October 1, 2010
Second CAP Progress Report	February 1, 2011
Third CAP Progress Report	May 1, 2011

In addition to reporting on implementation of the CAP, D.C. OSSE must also submit the specific data and other information as described below:

- (1) Provide valid and reliable data for SPP/APR Indicator 15

With its first CAP progress report, due October 1, 2010, D.C. OSSE must provide a preliminary report of the State's FFY 2009 actual target data for compliance Indicator 15. The State's preliminary data must be reported consistent with the required measurement and instructions for the FFY 2009 SPP/APR submission. This includes reporting all findings of noncompliance identified during FFY 2008 (July 1, 2008 through June 30, 2009) using all components of the State's system of general supervision (monitoring, State complaints, due process hearings, etc.). D.C. OSSE must use the SPP/APR Indicator 15 Worksheet when reporting its preliminary data. The State must describe the specific actions taken to verify the correction of noncompliance. In order to demonstrate that the identified noncompliance has been corrected, the State must verify that each LEA with noncompliance identified in FFY 2008 is: (1) correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data, such as data subsequently collected through on-site monitoring or a State data system; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA consistent with OSEP Memo 09-02.

- (2) Provide valid and reliable data for Indicator 12

With its first CAP progress report, due October 1, 2010, D.C. OSSE must provide a preliminary report of the State's FFY 2009 actual target data for compliance Indicator 12. The State's preliminary data must be reported consistent with the required measurement and instructions for the FFY 2009 SPP/APR submission. This includes reporting the range of days beyond the third birthday when eligibility was determined and the IEP developed and the reasons for the delays.

- (3) Demonstrate compliance with early childhood transition requirements
- (A) With its second CAP progress report, due February 1, 2011, D.C. OSSE must report the percent of children referred by Part C prior to age three, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthdays for the period July 1, 2010 through December 31, 2010. D.C. OSSE must also indicate the range of days beyond the third birthday when eligibility was determined and the IEP developed and the reasons for the delays.
- (B) With its third CAP progress report, due May 1, 2011, D.C. OSSE must report the percent of children referred by Part C prior to age three, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthdays for the period January 1, 2011 through March 31, 2011. D.C. OSSE must also indicate the range of days beyond the third birthday when eligibility was determined and the IEP developed and the reasons for the delays.
- (4) Demonstrate compliance with secondary transition requirements
- If in its March 1, 2011 MOA progress report, D.C. OSSE reports that of the 100 IEPs reviewed for the December 1, 2010 through February 1, 2011 reporting period, less than 95% of the student records reviewed had IEPs that included the required secondary transition content, D.C. OSSE must:
- (A) Select a new random sample of at least 100 IEPs of youth aged 16 and above to be reviewed for IEP secondary transition content between February 2, 2011 and March 31, 2011.
- (B) Report with its third CAP progress report, due May 1, 2011, of the student records reviewed, the percent of youth aged 16 and above that had IEPs that included the required secondary transition content.
- (5) Demonstrate compliance with the requirement to implement HODs in a timely manner<sup>4</sup>
- If in its March 1, 2011 MOA progress report, D.C. OSSE reports less than 95% of HODs were implemented within the time frame prescribed by the hearing officer or by the State or less than 95% of the backlog of HODs was implemented, D.C. OSSE must, with its third CAP progress, due May 1, 2011:
- (A) Report the following specific data concerning implementation of HODs:
- (a) the number of children whose HODs, as of the end of the previous reporting period (February 1, 2011), had not been implemented within the time frame established by the hearing officer or by the State;

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<sup>4</sup> For purposes of the FFY 2010 Special Conditions and the MOA, “hearing officer determinations” does not include settlement agreements and the data are calculated on a per child basis, not per HOD in cases where the same child has more than one HOD.

- (b) the number of children whose HODs had not been implemented within the time frame established by the hearing officer or by the State (became overdue) during the reporting period (February 2, 2011 through March 31, 2011);
  - (c) the number of children from (a) and (b) whose HODs were implemented during the reporting period (February 2, 2011 through March 31, 2011); and
  - (d) the number of children whose HODs had not been implemented in a timely manner at the conclusion of the reporting period (March 31, 2011).
- (B) Report the percent of HODs that were implemented in a timely manner between February 2, 2011 and March 31, 2011.
- (C) Report the percent of children whose HODs, as of the end of the previous reporting period (February 1, 2011), had not been implemented within the required time frame (backlog) and whose HODs had not been implemented within the required time frame during the reporting period that had HODs implemented during the reporting period (February 2, 2011 through March 31, 2011). (To calculate the percentage, use data reported in (5)(A) above: (c) divided by (a) + (b) times 100).
- (6) Demonstrate compliance with the requirement to conduct timely initial evaluations and reevaluations

If in its March 1, 2011 MOA progress report, D.C. OSSE reports less than 95% of initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period were conducted in a timely manner or less than 95% of the backlog of overdue initial evaluations and placements was completed, D.C. OSSE must, with its third CAP progress, due May 1, 2011:

- (A) Report the following specific data concerning initial evaluations:
  - (a) the number of children who, as of the end of the previous reporting period (February 1, 2011), had been referred for, but not provided a timely initial evaluation and placement;
  - (b) the number of children referred for initial evaluation and placement whose initial evaluation and placement became overdue during the reporting period (February 2, 2011 through March 31, 2011);
  - (c) the number of children from (a) and (b) above, who were provided initial evaluations and placements during the reporting period (February 2, 2011 through March 31, 2011);
  - (d) the number of children who had not been provided a timely initial evaluation and placement at the conclusion of the reporting period (March 31, 2011); and

- (e) the average number of days the initial evaluations and placements that had not been provided in a timely manner were overdue.
- (B) Report the percent of initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period (February 2, 2011 through March 31, 2011) that were conducted in a timely manner.
- (C) Report the percent of children (a) who as of the end of the previous reporting period (February 1, 2011), had not been provided a timely initial evaluation and placement (backlog) and (b) whose initial evaluation and placement became overdue during the reporting period, that were provided initial evaluations and placements during the reporting period (February 2, 2011 through March 31, 2011). (To calculate the percentage use data reported above in (6)(A): (c) divided by (a) + (b) times 100).

If in its March 1, 2011 MOA progress report, D.C. OSSE reports less than 95% of triennial reevaluations were conducted in a timely manner or less than 95% of the backlog of overdue triennial reevaluations was completed, D.C. OSSE must, with its third CAP progress report, due May 1, 2011:

- (D) Report the following specific data concerning triennial reevaluations:
  - (a) the number of children who, as of the end of the previous reporting period (February 1, 2011), had not been provided a timely triennial reevaluation;
  - (b) the number of children whose triennial reevaluation became overdue during the reporting period (February 2, 2011 through March 31, 2011);
  - (c) the number of children from (a) and (b) above, who had been provided triennial reevaluations during the reporting period (February 2, 2011 through March 31, 2011);
  - (d) the number of children who had not been provided a timely triennial reevaluation at the conclusion of the reporting period (March 31, 2011); and
  - (e) the average number of days the triennial reevaluations that had not been provided in a timely manner were overdue.
- (E) Report the percent of triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell within the reporting period (February 2, 2011 through March 31, 2011) that were conducted in a timely manner.
- (F) Report the percent of children (a) who, as of the end of the previous reporting period (February 1, 2011), had not been provided a timely triennial reevaluation (backlog) and (b) whose triennial reevaluation became overdue during the reporting period, that were provided triennial reevaluations during the reporting period (February 2, 2011 through

(7) Demonstrate that the State has a general supervision system that is reasonably designed to effectively identify and correct noncompliance in a timely manner

With its third CAP progress report, due May 1, 2011, D.C. OSSE must provide the following information:

- (A) The number of findings of noncompliance D.C. OSSE made during FFY 2009 (July 1, 2009 through June 30, 2010);
- (B) The number of findings included in (7)(A) for which the State verified the noncompliance was corrected as soon as possible and in no case later than one year after the State's identification of the noncompliance;
- (C) A description of the actions taken to verify the correction of noncompliance to ensure that each LEA with noncompliance is:  
(1) correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data, such as data subsequently collected through on-site monitoring or a State data system; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA consistent with OSEP Memo 09-02;
- (D) The number of findings reported in (7)(A) for which the one year timeline for correction has not yet expired; and
- (E) A description of the actions the State has taken to address any findings of noncompliance reported in (7)(A) that were not corrected within one year of the State's identification of the noncompliance.

c. **MOA Progress Reports:** D.C. OSSE must continue to provide progress reports that include the specific information required under the MOA for the following: timely initial evaluations and reevaluations; timely implementation of HODs; identification and timely correction of noncompliance, including noncompliance related to placement in the LRE; and secondary transition. The reporting periods, timelines, and evidence standards for the MOA progress reports are set forth in the MOA.

d. **Directed Use of State-Level IDEA Section 611(e) Funds:** As directed in OSEP's June 3, 2010 FFY 2008 SPP/APR response letter to D.C., OSSE must use \$500,000 of its FFY 2010 State-level funds under IDEA section 611(e) to carry out initial evaluations and reevaluations for children who have not been provided a timely initial evaluation or reevaluation (i.e., to reduce the backlog of overdue evaluations and reevaluations). The Secretary authorizes D.C. to use the otherwise directed funds for other purposes if D.C. OSSE elects to direct LEAs that demonstrated noncompliance with the requirements to conduct timely initial evaluations and reevaluations, to use \$500,000 of their FFY 2010 Part B funds to reduce the backlog of overdue evaluations and reevaluations.

- (1) With its October 1, 2010 MOA progress report, D.C. OSSE must report whether it intends to: (1) use \$500,000 of its FFY 2010 State-level funds under IDEA section 611(e) to carry out initial evaluations and reevaluations for children who



have not been provided a timely initial evaluation or reevaluation (i.e., to reduce the backlog of overdue evaluations and reevaluations); (2) direct those LEAs that demonstrated noncompliance with the requirements to conduct timely initial evaluations and reevaluations to use \$500,000 of their FFY 2010 Part B funds to reduce the backlog of overdue evaluations and reevaluations; or (3) use a portion of its FFY 2010 State-level funds, and direct those LEAs that demonstrated noncompliance with the requirements to conduct timely initial evaluations and reevaluations to use a portion of their FFY 2010 Part B funds, to reduce the backlog of overdue evaluations and reevaluations. D.C. must also provide information on how it will track the use of these funds to ensure they are used for the required purpose.

- (2) By May 15, 2011, D.C. OSSE must provide documentation to OSEP that demonstrates that D.C. OSSE has used \$500,000 of FFY 2010 State-level funds under IDEA section 611(e) and/or has directed LEAs to use FFY 2010 Part B funds to reduce the backlog.
- e. **FFY 2009 SPP/APR:** D.C. OSSE must submit its FFY 2009 SPP/APR to OSEP, due February 1, 2011. D.C. OSSE must report consistent with the required measurement and instructions FFY 2009 data for Indicators 12 and 15 and must address all issues identified in OSEP's June 3, 2010 response to the State's FFY 2008 SPP/APR submission related to these indicators.

### 3. Evidence Necessary for Conditions to be Removed

The Department will remove these Special Conditions if, at any time prior to the expiration of the FFY 2010 grant year, the State provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above.

### 4. Method of Requesting Reconsideration

The State can write to OSEP's Acting Director, Dr. Alexa Posny, if it wishes the Department to reconsider any aspect of these Special Conditions. The request must describe in detail the changes to the Special Conditions sought by the State and the reasons for those requested changes.

### 5. Submission of Reports

D.C. OSSE must submit all reports required under these Special Conditions to:

Lisa M. Pagano  
U.S. Department of Education  
Office of Special Education and Rehabilitative Services  
Office of Special Education Programs-MSIP  
550 12<sup>th</sup> Street, S.W., Room 4174  
Washington, D.C. 20202 or by e-mail to: [lisa.pagano@ed.gov](mailto:lisa.pagano@ed.gov)